

IT 95-34
Tax Type: INCOME TAX
Issue: Non-Filer (Income Tax)

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
ADMINISTRATIVE HEARINGS DIVISION
CHICAGO, ILLINOIS

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DEPARTMENT OF REVENUE      )  
STATE OF ILLINOIS          )  
                             )  
      v.                    )   Docket:  
                             )  
XXXXXX                     )  
                             )   Hollis D. Worm  
                             )   Administrative Law Judge  
Taxpayers(s)               )  
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RECOMMENDATION FOR DISPOSITION

SYNOPSIS: This matter is before this administrative tribunal as a result of a timely Protest by XXXXX (hereinafter referred to as the "taxpayer") to a Notice of Denial (hereinafter referred to as the "Notice") issued to him on October 15, 1991. The basis of this Notice is the Illinois Department of Revenue's (hereinafter referred to as the "Department") determination that the taxpayer incorrectly computed an "Illinois loss" for the 1987 tax year.

In his Protest to the Notice, the taxpayer contends that the Department previously refunded claims on the same loss on the sale of Illinois farm land for the 1986 and 1988 tax years. The taxpayer did not request a formal hearing in this matter. Therefore, the following issue is being heard on the information provided by the taxpayer in his Protest and on the Notice of Denial: 1) whether the Department correctly denied the taxpayer's claim for refund for the 1987 tax year?

Following a review of the documentation, it is recommended that this case be decided in favor of the Department.

FINDINGS OF FACT:

1. The Department's prima facie case, inclusive of all jurisdictional elements, is established by the Notice of Denial which indicates that the taxpayer incorrectly computed a net operating loss for Illinois purposes for the 1987 tax year. Dept. Ex. No. 1

2. The taxpayer filed a claim for refund for the 1987 taxable year based upon a 1989 loss from a farm located in Illinois. Taxpayer Ex. No. 1

3. The taxpayer did not have a federal net operating loss in 1989.

4. The taxpayer filed a timely protest to the Notice, and did not request a formal hearing. Taxpayer Ex. No. 2

5. The Department sent letters to the taxpayer to recover the erroneous refunds for the 1986 and 1988 tax years. Dept. Ex. No. 2

6. The taxpayer failed to present competent evidence that the Department's Notice of Denial was not correct.

CONCLUSIONS OF LAW: The Illinois Income Tax Act, 35 ILCS 5/203 et seq. imposes Illinois income tax liability on a taxpayer's "net income". Net income is defined as "base income" less certain amounts not relevant to this matter. For an individual, base income is the taxpayer's federal adjusted gross income (hereinafter referred to as "Federal AGI") subject to specifically enumerated addition and subtraction modifications. 35 ILCS 5/203(a).

The Department denied the taxpayer's claim for refund for the 1987 tax year because the taxpayer did not incur a federal net operating loss (hereinafter referred to as "F.N.O.L.") in 1989 to be carried back to the 1987 tax year for Illinois purposes. For Illinois purposes, a F.N.O.L. is allowable only to the extent that Federal AGI is affected. Federal adjustments that would create, increase or decrease a loss are necessarily disregarded because of the statutory definition of base income. 35 ILCS 5/203(a).

In his letter of Protest, the taxpayer did not request a formal

hearing. 35 ILCS 980(a) Therefore, the rebuttal to the Department's prima facie case in this cause is found in the taxpayer's representations as found in his written Protest.

The taxpayer's assertion that the Department previously refunded claims on the same loss on the sale of Illinois farm land for the 1986 and 1988 tax years, without providing any legal authority, is not sufficient to overcome the prima facie correctness of the Department's Notice of Denial. In fact, the Department realized it had erroneously refunded the taxpayer's claims for the 1986 and 1988 tax years and attempted to recover the refunds. The Notice of Denial is prima facie correct so long as its proposed adjustments meet some minimum standard of reasonableness. *Vitale v. Illinois Department of Revenue*, 118 Ill.App.ed 210 (3rd Dist. 1983). In order to overcome this prima facie correctness, the taxpayer must present competent evidence that the proposed adjustments are incorrect. *Masini v. Department of Revenue*, 60 Ill.App.3d 11 (1st Dist.1978). The taxpayer has failed to meet that burden in this case.

A taxpayer cannot overcome the Department's prima facie case merely by denying the accuracy of its assessments. *Smith v. Department of Revenue*, 143 Ill.App.3d 607 (5th Dist.1986); *Puelo v. Department of Revenue*, 117 Ill.App.3d 260 (4th Dist.1983). Here, the taxpayer's challenge was unaccompanied by any documentary support. Accordingly, the taxpayer failed to overcome the Department's prima facie case.

Hollis D. Worm
Administrative Law Judge

May 10, 1995